In the Supreme Court of Florida

JUNE TERM, A. D. 1945
EN BANC

CHARLES O. NELSON, *Appellant*

vs.

STATE OF FLORIDA, ex rel.,
H. LESLIE QUIGG, *Appellee.*

APPELLEE'S PETITION FOR REHEARING

The Appellee petitions for hearing upon the following grounds:

I.

The Court overlooked that Appellee was, contrary to the Fourteenth Amendment of the United States Constitution, deprived of his property rights of office and pension by a bare majority of the City Commission without due process, in that the Court held the Commission's ruling sustained by *substantial evidence.* To be dignified as *evidence* in a Court of Law due process requires that testimony be given under the sanctity of an oath. The Commission refused, after timely objection made, to require the City's witnesses to be sworn by a notary public or other qualified officer, but permitted the Mayor, who has no authority whatever in this proceeding, either at common law or by statute, to swear all City witnesses. On Page 138, et seq. of our brief we demonstrated both the necessity for an oath and the Mayor's lack of power to administer one.

The decision mentions our war effort and our military forces in foreign lands fighting for the cause of democracy (with which no one is more conversant than Chief Quigg, as he constantly watches for news of his son, almost daily riding on the wings of death over Japan in his B-29). Democracy at home, for our boys to come back to, however, as we know the Court agrees, recognizes the necessity that fundamentals of liberty be preserved here; and one of them, we suggest, is that no American should be condemned and his property rights taken away except by due process of law, of which, sworn testimony, we thought, an essential ingredient.

Obviously the learned Circuit Judge who wrote the opinion for the Court, and the eminent Jurists who concurred, overlooked this point, for it cannot, even for a moment, be thought that they, having so keenly in mind, as reflected by their decision, the fundamental democratic principles for which men die, would, except by inadvertance, ignore those which these men hoped, by their dying, they could let live.

II.

The Court overlooked that a bare majority of the City Commission who dismissed Chief Quigg from office denied him a fair and impartial trial to which he was entitled under the Fourteenth Amendment of the United States Constitution and Section 11, Declaration of Rights, Florida Constitution. In the Herald contempt case, decided the same day as the Quigg case, the Court quoted with approval the following language:

> "There is another Constitutional guaranty equally as binding as freedom of the press. We have reference to fair and impartial trial guaranteed by Article 6, Federal Constitution, and Section 11, Declaration of Rights, Florida Constitution. Freedom of the press cannot be exploited in a manner to destroy fair and impartial trial .... when press reports of a trial are turned into assaults

on the character and integrity of the presiding judge .... they degenerate into trial by newspaper."

One of the Commissioners whose vote was necessary to constitute a bare majority against Chief Quigg stands convicted by the record and his own admission of switching his vote several days later from one of striking charge 7 to one of reinstating it against Chief Quigg, because he was intimidated into so doing by the same newspaper which now stands convicted by the Supreme Court of trying unsuccessfully to intimidate two Circuit Court Judges. We demonstrated this conclusively on page 54, et seq., of our brief, where the cartoons, the editorials, the judicial admissions and the admitting statements of the Commissioner are referred to and quoted from.

To us it is inconceivable that the Court would, except by inadvertance, on the same day it condemned the unsuccessful attempt of a newspaper to influence by intimidation a courageous judge, find no error when such attempt succeeded with a weaker one, resulting in denying to a litigant perhaps his most sacred and primary privilege, namely, to have a fair and impartial trial. It stands judicially admitted, and the record is clear, that charge No. 7, once dismissed with the vote of a commissioner, was restored by the pen of a cartoonist and an editorial writer. The present war has proven the pen not to be mightier than the sword, but this case proves it to be stronger than a faint hearted judge. Our "democracy", our "quasi-Utopian dream", our "American Way of Life". extolled with patriotic fervor in the opinion, all become mirages to mock our thirst for impartial justice, when whether it lives or perishes, depends upon the variable political caprices of a newspaper.

The opinion strongly condemns Chief Quigg, because, apparently, the Court thought his actions motivated by fear, though the record repeatedly denies this—Chief Quigg even testifying that his dead body would have been lying on the Courthouse steps had the strikers sought to secure anything

unlawful. On the other hand, however, the opinion is silent about the admitted intimidation of a commissioner who sat in judgment on the charges against the Chief.

Surely it is not consistent with a fair trial, as we understand it, that the impartial Goddess of Justice, pictured in men's minds as having both eyes tightly bandaged against all outside influences, so that her hand might hold in true balance the scales of justice, should lower the bandage from one eye to view with condemnation the asserted intimidation of an accused, and keep the other eye tightly bound and blind to the successful intimidation of the judge trying the accused.

The Court never intended any such result and we earnestly ask that you make this clear upon rehearing.

III.

In characterizing Chief Quigg's conduct by "a synonym for the surname Chamberlain" and stigmatizing him as "intimidated, cowed, overawed, and swayed from his path of duty" the Court has unintentionally, we believe, laid down the dangerous rule that a law enforcement officer cannot in a situation of grave emergency preserve the peace, save lives, prevent damage to persans and property, quell disorder, relieve the public from the inconvenience of disrupted public utilities by any method except by the exercise of force. The emphasis of the opinion upon the larger number of available men to aid Chief Quigg, and the language of the learned Circuit Court Judge who wrote the opinion that "their combined number would have been sufficient to have eliminated at least the serious traffic hazard with its attendant grave potentialities" seems most indicative of the establishment of such rule. Since Chief Quigg in one hour and twenty minutes settled the strike and removed all "its grave potentialities", something which the application of force could not, under the circum-

that Chief Quigg's fault in the eyes of the Court necessarily lay in his method rather than in his result.

In labeling Chief Quigg's method of securing the peaceful termination of the strike as "Chamberlain appeasement", the Circuit Judge who wrote the opinion unfortunately failed to distinguish between what the record shows to have been the actions of Chief Quigg, and what history records to be the actions of the British Statesman.

First: Chamberlain, under the circumstances presented to him, incorrectly judged Hitler and his intentions with the result that his appeasement plunged the world into an ocean of blood, with uncounted billions of property damage and destruction, at a time when valor might have been the better part of discretion. Chief Quigg, however, correctly judged Frazier and his intentions, with the result that his appeasement shed not one drop of blood, hurt not one innoecnt bystander, destroyed not one dollar's worth of property, interrupted only one public utility for about one hour and twenty minutes, stopped the imminent threat of a general paralysis of public utilities necessary to health and safety, and restored permanent peace and order to the community. We suggest that those whose lives, property, and convenience were thus removed from jeopardy by the prompt action of Chief Quigg would all agree that this was a time when he should have used discretion, rather than a rash and costly valor, especially since the law allows ample time for valor to be displayed by regular prosecution through the Courts of those guilty of criminal offense.

If Chamberlain could have by peaceful means accomplished internationally what Quigg did locally as Chief of Police, it is doubtful whether the British Empire would have proven ungrateful enough to have removed him in disgrace from his office even though such action was strongly advocated by a London newspaper.

Second: Hitler wanted what it was unlawful and wrong for him to have, and what Chamberlain knew it was unlawful

and wrong for him to have, namely, the annexation of Czechoslovakia. By assisting him to obtain it, he became an accessory to an unlawful and wrongful purpose and object. Frazier wanted something which it was lawful and right for him to have, namely the release on bail bond of a man who was entitled to such bond under both our State and Federal Constitutions. It is, of course, correct that it is not the official duty, as such, of a chief of police to assist an accused to post bond which is a judicial function. However, it is the duty of a police officer to protect persons and property from threatened wrong and to prevent disorder. In the performance of these duties he is given a reasonable discretion under the general law and by virtue of city ordinance. *Section* 301 of the Traffic Code of Miami provides:

> "provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, or when necessary to protect property, officers of the Police or Fire Divisions may direct, as conditions may require, contrary to the provisions herein contained."

(See brief, p. 19); also see pages 27 to 37, Appellee's brief. If a police officer reasonably believed (and the testimony is undisputed that he did) that in order to protect persons and property from threatened wrong, and to prevent further and greater disorder it became necessary for him to do a lawful act which "to the most fantastic mind does not come within the purview of his official duties" can it be correctly said he swayed from his path of duty by so doing, when thereby he protected and prevented that which it was his official duty to protect and prevent?

Simple, indeed, to define "law enforcement officer", as it is to define "judge". Difficult, indeed, to enforce the law correctly on all occasions as it is to apply correctly legal principles to all circumstances. That, we believe to be the reason the law allows a peace officer reasonable discretion in the performance of his duties, holding him accountable for only those errors of judgment motivated by malice or bad faith.

In the *Hammond* case, 153 Fla. 245, 14 So (2d) 390, Your Honors announced this to be the law. In this case you appear to have deprived him of this discretion, because the opinion apparently prescribed surgery to the exclusion of preventative medicine as the sole remedy for "coronary thrombosis at the very heart of the metropolitan area."

IV.

No court is entirely free from error, but, we believe, no Court will more freely admit it in the interest of justice than the Supreme Court of Florida. It is the former quality which makes judges human; the latter, which shows them conscious of the divine. No principle is more difficult of application by finite minds than justice between man and man, and no characteristic is more Godlike than the zeal to do so.

In this spirit we suggest to Your Honors that you inadvertently convicted and condemned the Appellee upon charges *two* and *three* on which he was found not guilty by the City Commission, that tribunal whose judgment Your Honors held Circuit Court Judge Ross Williams in error for not upholding. By this action, we suggest, you deprived Chief Quigg of his property rights of office without due process of law contrary to the Fourteenth Amendment of the Federal Constitution, and the similar provision of our own, in that you upheld his dismissal not upon charges upon which he was convicted, but upon those on which he was acquitted.

It will horrify Your Honors, as it did Chief Quigg and his counsel, when you realize that you tried Chief Quigg "de novo on a cold typed transcript", and made findings of fact against him on said charges diametrically opposite to those of the City Commission, also without benefit "of the talking motion picture", a procedure for which you held Honorable Ross Williams in error, when he disagreed with the findings of the City Commission on the charges they did *not* dismiss. It never occurred to Chief Quigg's counsel to argue the correct-

ness of the Commission's findings of not guilty on those two charges upon which the decision is now based. It is, therefore, humiliating to counsel to find now that our failure to do so contributed to our friend and client not only being deprived of his office, but being branded a coward as well—something of which even a majority of the Miami City Commission acquitted him, and which until now had never been even remotely associated with his name by any responsible source.

The opinion says, "the ruling of the City Commission is sustained by substantial evidence." No distinction being made in the opinion between the evidence upon which the City Commission convicted the Appellee on charges *one* and *four*, and that which warranted them in acquitting him of charges *two* and *three*, one would assume it was the intention of the writer of the opinion to hold both the Commission's ruling of conviction as well as those of acquittal to have been sustained by *substantial evidence*. However, it is at once apparent, if such be the case, that the opinion is inconsistent in holding the Commission's findings of not guilty on charges *two* and *three* sustained by substantial evidence, and then approving the Commission's removal of Petitioner upon those same charges, as if he had been found guilty of them by the Commission. Since the learned Circuit Judge who wrote the opinion would not have been knowingly guilty of such inconsistency, it is much more probable, we suggest, that its occurence is due to the fact that he inadvertently overlooked the contents of charges *two* and *three* and their dismissal by the City Commission.

The opinion says that the bus strike with its ramifications amply justified the removal of Chief Quigg. (Opinion, p. 3). Chief Quigg's fault in connection therewith is unmistakably defined in clear, concise, and cutting language. The opinion says:

> "Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a

bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence. Law enforcement officers cannot be so intimidated, cowed, overawed and swayed from their paths of duty . . . ."

This finding by the Court of fault to exist in Chief Quigg's method of handling the strike and the strikers necessarily results from a *de novo* trial of Chief Quigg by the Supreme Court, because the City Commission held him not to be guilty of such fault, when the Commission acquitted him on charge *three* reading as follows:

"You are guilty of misfeasance in the office of Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that, in violation of your oath of office, you devoted your time and your energies at and during the time of a strike of bus drivers in said City on the night of March 29, 1944, to meeting the demands of the leaders of the drivers, who were violating in your presence and under your observation the ordinances of said City and the criminal statutes of the State of Florida, and in aiding and abetting said leaders to effect the release from the City jail of a prisoner who had been lawfully convicted in the Municipal Court of said City and had been lawfully sentenced to imprisonment in said jail."

Furthermore, that part of the opinion mentioned above that Chief Quigg failed to perform his duties, likewise constitutes a trial *de novo* by the Supreme Court, because the chief was necessarily acquitted of this alleged failure to perform his duties when he was acquitted of charge number *two*, which reads as follows:

"You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of

Police of the City of Miami, Florida, to give orders or instructions to the officers and other personnel of said Division of Police to enforce the ordinances of said City and the criminal statutes of the State of Florida, during or subsequent to the violations thereof committed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944."

V.

The Court overlooked the point made on page 144, et seq., of our brief that by acquitting Chief Quigg of charge number *two* heretofore quoted in full in ground IV of this petition that by necessary implication the City Commission also acquitted him of charges *one* and *four*, the only charges relating to the bus strike upon which Chief Quigg was convicted. Charges *one* and *four*, respectively, read as follows:

"1. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to enforce the ordinances of said City and the criminal statutes of the State of Florida at the time of violations thereof committed in your presence and under your observation at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

* * * *

4. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to cause or to bring about the apprehension, arrest and punishment of any or all of numerous persons who violated the ordinances of said City and the criminal statutes of the State of Florida at and during the time of a strike of bus drivers in said City on the night of March 29, 1944."

The gist of charge *two* is that Chief Quigg neglected his duty, because he failed to give orders to the police personnel under his command to enforce the ordinances of Miami and criminal statutes of Florida, either *during* or *subsequent* to the time the bus strikers violated the same on the night of the

bus strike. The gist of charge *one* is that the Chief neglected his duty because he failed to enforce the same ordinances and criminal statutes, when they were violated by the bus strikers in his presence during the time of the bus strike. The gist of charge *four* is that Chief Quigg neglected his duty because he failed to cause the apprehension and punishment subsequent to the time of the bus strike, of the bus drivers who had violated these same ordinances and criminal statutes. It will thus be observed that charge *two* is a combination of both charges *one* and *four* and that every element of the latter charge is embraced in the former one. The law is clear that a judgment based upon such inconsistent findings of fact is void and not permitted to stand. We collected the cases allowing this to be the universal rule on Pages 146 and 147 of our brief. This point alone from a legal standpoint is determinative of the bus strike charges, and, if the Court sees fit to grant us a rehearing, we will demonstrate conclusively that the action of the Commission in finding the Appellee not guilty of charge *two*, but nevertheless removing him on charges *one* and *four*, is illegal and void, and deprives the Appellee of his property rights of office without due process of law, contrary to the Fourteenth Amendment of the United States Constitution.

VI.

Since the Court's opinion said the bus strike incident alone "presented ample justification" for the ruling made by the City Commission, we believe that Your Honors may have deemed it unnecessary to consider charge number *seven* dealing with the alleged friction between Chief Quigg and one of his subordinates, the non-establishment of schools in the Police Department, the influence of the Miami Police Benevolent Association in police matters, and the failure to use a teletype machine for a while in the Captain's office. If you did not consider charge number *seven*, and we are unable to determine this definitely from the opinion, then, of course, the sole question posed by the Court as determinative of the case, viz: "does a consideration of the record in its entirety disclose the

ruling of the City Commission to be sustained by substantial evidence?" would be irrelevant. If the Court considered charge *seven* and the question raised by the Court applicable to this charge, then we suggest the Court overlooked the fact which we demonstrated on pp. 59, et seq., of our brief that this charge was non-existent, when the City Commission made its ruling against Chief Quigg, because it had been stricken from the charges by the Commission on Appellee's motion and not legally revived. If so, the degree of evidence to support a stricken charge would be immaterial, for no quantum of proof could breathe life into a dead charge.

We showed that Section 26 of the Miami Charter vests exclusive and sole power in the City Manager to prefer a charge against the Chief of Police. During the progress of the City's case against Chief Quigg the Commission struck out charge *seven*, upon Appellee's motion, from the specification of charges preferred by the City Manager against the Chief of Police. After the City had rested its case, Commissioner Hosea, who formed the majority of the Commission who struck out charge *seven*, attempted himself to re-prefer it against the Chief, because of the attacks made upon him by the *Miami Herald* (see P. 56 of our brief). Commissioner Hosea moved to reinstate charge *seven*, which motion, of course, was concurred in by the two Commissioners who originally voted against the elimination of this charge. Since the City Manager alone could prefer a charge against the Chief of Police under the Miami City Charter, we contend that Hosea's attempt to do so, when he sought to reinstate this charge, was void. Either the Court therefore, as we believe did not consider charge *seven*, confining its opinion to the bus strike, or this point escaped consideration.

VII.

We suggest, with great deference to the views of the Court, that the Court overlooked the fact that Commissioner Hosea, whose vote was necessary to form the bare majority of the Commission who voted to remove Chief Quigg, was totally

disqualified to participate in the judgment against Chief Quigg, because of his proven and admitted domination by influence, de hors the record, hostile to Chief Quigg, and because of his bias and prejudice against Chief Quigg readily apparent during the course of the trial. Since the Court's opinion, as we understand it, found that Judge Ross Williams fell into error because he failed to recognize the consanguinity between the rules requiring that great weight be equally given by an appellate court to the findings of a chancellor and that of a city commission, we suggest that the Court overlooked that Judge Williams' failure to give great weight to the findings of a bare majority of the City Commission was not due to his lack of appreciation of the relationship between the rules, but rather, that he followed the exception to these rules, namely, that they are never applicable, when the findings of a Judge or a Commission are motivated by influence outside the record and are the results of prejudice and bias against an accused. Without the vote of Commissioner Hosea there could have been no finding of the City Commission against Chief Quigg because two of the five members of the Commission, namely, Commissioners R. C. Gardner and C. H. Reeder, voted for Chief Quigg on all charges. The fact that Commissioner Hosea failed to give a fair trial to Chief Quigg and an impartial consideration of the evidence tainted and fouled the findings against Chief Quigg of the Commission majority, regardless of what motives may have governed the other two members of the Commission who voted with Commissioner Hosea against Chief Quigg.

Viewed in this light, we respectfully suggest that Judge Williams did not fall into error, but rather avoided the pitfall of giving great weight in a Court of law to a finding infected with the vice of both politics and venom—two poisons which eternal vigilance itself finds difficult to keep from the Fountain of Justice.

Your Honors held in *State Board of Funeral Directors and Embalmers v. Cooksey*, 4 So (2d) 253, as late as 1941 that a member of an administrative board (which you have held

the City Commissioner to be in removal cases) should not participate in the Board's proceedings against an accused where such member is prejudiced against the accused, or interested in the outcome—and this too despite the fact that there was no provision in the law creating the Board for disqualification of such member. On Pages 62, et seq., we discussed at length Mr. Hosea's disqualification and the presentation of timely motion with accompanying affidavits that he disqualify himself, which he refused to do. We renewed our motion again, when he precipitated a heated controversy with Chief Quigg by questioning Chief Quigg's veracity during his trial, which brought out a disclosure of Commissioner Hosea's recent drunkness in the City Manager's office. This resulted in Commissioner Hosea being bitter, hostile, prejudiced, and biased against Chief Quigg, and made his vote against Chief Quigg the combined result of his fear of the *Miami Herald,* and his hatred of Chief Quigg. We urge the Court in the interest of justice and the known desire of Your Honors to accomplish it, that you read again pages 62-81 of our brief on this vital and far reaching point and allow us a rehearing.

VIII.

The opinion states "the record fails to show either any serious effort to perform his duties or any proximate accomplishment thereof." We suggest that in making this finding the Court overlooked in the volunminous record certain evidence which, when considered, renders, we believe, this conclusion at variance with the record. The eighty-three Miami Transit buses which served the City of Miami area, and the seventeen or eighteen Miami Beach Railway Company buses which served the City of Miami Beach area were all parked around the Courthouse, and their drivers had mingled with the crowd of five hundred or more people present, when Chief of Police Quigg, who had been home and in bed arrived on the scene shortly before eleven P. M. Some of the buses were legally parked against the curbing around the Courthouse. The record is undisputed that not one striking bus

driver violated any city ordinance or criminal statute of Florida by illegally parking a bus or driving it illegally in the presence of the Chief. (See Tr., pages 750-751). Chief Quigg, it is true, could have put illegal parking tickets on the buses; he could have attempted, with doubtful results, in view of the hostile spirit that prevailed then, to have ferreted out from the crowd of over one hundred bus drivers, those who were guilty of violating the law because of illegal parking from those who were not, and placed them in jail, but this would have required the City Clerk and his deputies to have been found, the City Clerk's office to be opened, a great number of affidavits to have been prepared, and a great number of warrants to be issued and served while the one hundred and fifty bus passengers, trying to get to their homes in Miami and Miami Beach, would have remained standing outside the Courthouse where they had been discharged by the bus drivers, or walked home. This would have precipitated, the record shows, violence of a tragic kind. The police officers, no doubt, could, with the assistance of the two city automobile wreckers and others that they might have been able to commandeer, have removed the buses to side streets, precipitating, no doubt, violence, and continuing the paralysis of the municipal transportation system of two cities, and likewise causing, as the Chief of Police had been reliably informed by the Municipal Judge and Director of Public Safety, sympathetic strikes of Union employees without whose labor the municipal water system would have failed. The latter strikes, the Chief had been informed, would have occurred at midnight, which was, as he testified, an important consideration in getting the strike settled before that hour. Since the Chief did perform at that time his official duties of protecting persons and property from threatened wrong and further disorder and disturbance by assisting, jointly with the Circuit Court Clerk and his Chief Deputy, the Union Leader in posting a bond for his incarcerated member, it must be that the Court's conclusion quoted above had reference to the fact that Chief Quigg did not, prior to his suspension, enforce the municipal ordinances and the criminal statutes of Florida by causing the arrest and punishment of

the striking bus drivers who were guilty of infractions of traffic laws, which is what charge *for* of the specification of charges against the Chief avers. We are lead to this conclusion in part by the fact that the record shows that the Director of Public Safety approved, in the presence of the City Manager, (both superior officers of the Chief,) Chief Quigg's method of settling the strike. The City Manager admitted that he was present with the Director of Public Safety in his office when Chief Quigg telephoned the Director and said, according to the City Manager's testimony, "Let me handle this. I will get it settled and don't get excited." (See brief, p. 44). The City Manager's memory failed him on the Director's reply to Chief Quigg, but Chief Quigg's undisputed testimony is that the Director replied, "O. K., if you need me I will be standing by." (See brief, p. 10).

We wish to sincerely urge, however, the consideration of these facts which show that it was impossible during the ten day period of time between the time of the bus strike and Chief Quigg's suspension by the City Manager, for him to cause the apprehension, arrest, and punishment of the striking bus drivers, guilty of law violations.

In the first place the City Manager immediately took the investigation of the bus strike and the strikers out of the hands of the Chief of Police and commenced his own investigation. It took him over a week with night sessions, and the assistance of five City attorneys, the County Solicitor, the Director of Public Safety, and the availability for subpoena serving of numerous police officers, for him to complete his investigation.

In the second place, the City Manager and the City Attorneys agreed during the course of their investigation that, since the County Solicitor would prosecute the strikers for violation of the State laws, that the City would not prosecute them for violating the Municipal ordinances (see Page 45 of the brief where this testimony of the City Manager appears). For this reason the bus strikers have never been prosecuted

by the City in the Municipal Court. Notwithstanding that the City Manager agreed during his investigation not to prosecute the bus drivers for violating the Municipal ordinances, yet, immediately at the close of his investigation, he suspended the Chief of Police for failure to arrest and cause the punishment of the strikers for violating these same municipal ordinances (See Charge No. 4). Also the City Manager blandly denies any intention to suspend the Chief because he did not prosecute the bus drivers for violating State laws, saying, "I am only interested in the Municipal ordinances." (See brief, P. 45). Yet charge No. 4 specifically suspends him for failure to do so.

In the third place, the City Manager prevented Chief Quigg from participating in the City Manager's investigation, or conducting an investigation of his own, because:

(a) When the Chief offered to help, he refused to let him and refused even to see him;

(b) He instructed the police officers who were subpoenaed before him not to discuss the matter with the Chief of Police (see brief, pp. 42-43);

(c) He tied up the witnesses by subpoena necessary for the Chief to interrogate, particularly the executive officers of the two transit companies, so that the Chief was unable during the City Manager's investigation to interrogate them and he had no opportunity after the investigation because the City Manager immediately suspended him.

Furthermore, the record shows that Chief Quigg began immediately, notwithstanding all these handicaps, to conduct an investigation, by instructing Police Officer, D. M. Kendall, Supervisor of Transportation, to immediately get a list of all bus drivers driving buses on the night of the strike. Since the Chief has had no power to subpoena, which the City Manager possessed under the Miami Charter, his investigation would naturally have taken as much, if not more

time than that of the City Manager, and he was in the process of collecting the necessary information to make his charges against the bus drivers when he was suspended. Surely ten days, under all circumstances, is an unreasonable time to require the Chief of Police to bring about the apprehension, arrest, and punishment of all the bus drivers, which is all the time he had between the night of the strike and his suspension from office, especially when the City Manager refused to cooperate with him in any manner.

We urge the Court most sincerely to read again our argument beginning on Page 37 of our brief which demonstrated, we earnestly insist, that Chief Quigg's conduct does not justify the conclusion of the Court quoted above. The law is clear, we submit, that where a police officer is making every reasonable effort to perform his duty, but is prevented from doing so by circumstances beyond his control, he is not subject to removal for neglect of duty.

In view of the premises, we pray for a rehearing.

RESPECTFULLY SUBMITTED:
E. F. P. BRIGHAM.
WORLEY & KEHOE,
BY: G. A. WORLEY,
ATTORNEYS FOR APPELLEE.

RECEIPT is hereby acknowledged of a copy of the above petition for rehearing of Appellee, this 11th day of August, 1945.

J. W. WATSON, JR., City Attorney.
By: SIDNEY S. HOEHL,
Assistant City Attorney,
City of Miami, Florida.

In the Supreme Court of Florida

JUNE TERM, A. D. 1945

MONDAY, SEPTEMBER 10, 1945

CHARLES O. NELSON, *Appellant*

vs.

STATE OF FLORIDA, ex rel.,

H. LESLIE QUIGG, *Appellee*

Counsel for Appellee having filed in this cause petition for rehearing and having been duly considered, it is ordered by the Court that said petition be and the same is hereby denied.

A True Copy

TEST:

GUYTE P. McCORD,

Clerk Supreme Court.

(COURT SEAL)

Supreme Court of the United States

OCTOBER TERM, 1945

NO._____

H. LESLIE QUIGG, *Petitioner*

vs.

CHARLES O. NELSON, *Respondent*

PETITION TO DISPENSE WITH PRINTING OF RECORD, OR, IN THE ALTERNATIVE TO PRINT AN ABBREVIATED RECORD.

Petitioner, H. Leslie Quigg, in the above cause, moves the Court for an order to dispense with the printing of the record in said cause, or, in the alternative, for an order for permission to print an abbreviated record as indicated below. In support hereof Petitioner alleges:

(1) The record is so voluminous it cannot be printed within the limitation of time prescribed by Section 8 of the Act of February 15th, 1925 (28 U.S.C.A., Par. 350), as extended by the order of the Supreme Court of the United States to February 5th, 1946, as Petitioner has been advised by the Clerk of said Supreme Court on January 3rd, 1946;

(2) All the original records in this cause which the Supreme Court of Florida had before it when it decided this cause have been transmitted by the Clerk of the Supreme Court of Florida to the Clerk of the Supreme Court of the United States, pursuant to the order of the Supreme Court of Florida dated November 19th, 1945, a true copy of which is hereto attached as Exhibit "A" and by reference made a part hereof;

(3) That for the then Appellant, Charles O. Nelson (the Respondent herein), the Supreme Court of Florida relaxed its rule requiring the record to be printed or typewritten and allowed the then Appellant, Charles O. Nelson (the Respondent herein), to file an abbreviated record of 85 pages containing only the pleadings of the parties and orders of the Circuit Court of Dade County, Florida. The balance of the record in said cause, including 1366 pages of testimony, 60 pages of exhibits, and all the original photographs, the Supreme Court of Florida allowed to be sent direct from the Circuit Court of Dade County, Florida, to said Supreme Court of Florida without being printed or copied, upon the ground that to require them to be either printed or copied would work undue hardship upon and cause the said Charles O. Nelson, the then Appellant, unreasonable expense if the Supreme Court of Florida rule were followed, all according to a true copy of said Supreme Court order attached hereto as Exhibit "B" and by reference made a part hereof;

(4) That counsel for both parties Petitioner and Respondent in this cause have complete copies of the record which is now lodged with the Clerk of the Supreme Court of the United States, being sent there by the Florida Supreme Court Clerk;

(5) That Petitioner's counsel have failed in a bona fide effort to delete over one-half of the record, in order that it might be printed within the time required by law, and, to that end, supplied counsel for the Respondent, Charles O. Nelson, with a complete list of the questions which they intend to raise in the United States Supreme Court upon their petition for certiorari, but counsel for the Respondent, Charles O. Nelson, have insisted on incorporating in the printed record testimony:

(a) Which was excluded by the City Commission which tried the Petitioner and which thereby eliminated it from the consideration of any Appellate Court;

(b) That had no bearing upon the questions which counsel for Petitioner intend to raise upon their petition for certiorari, copy of which questions were supplied counsel for the Respondent, Charles O. Nelson;

(c) Exhibits and photographs which are either irrelevant and immaterial, or which could be inspected by the Court since the originals are on file with the Clerk of the Supreme Court of the United States;

(6) That the insistence of counsel for the Respondent that so much of the record be printed prevents it from being printed in the time required by law;

(7) That all questions to be raised by Petitioner in his petition for certiorari are questions of law of which the testimony is not essential to their decision except one dealing with the good faith of the Petitioner in his actions on the night of the alleged bus strike, and that can be shown by incorporating in the brief appropriate quotations of testimony with appropriate references to the testimony now on file with the Clerk of the Supreme Court of the United States.

WHERFORE, the premises considered, it is respectfully prayed that this Honorable Court will enter an order dispensing with the necessity of printing of the record in this cause, or, in the alternative, that this Honorable Court will enter an order requiring to be printed only the pleadings of the parties and the orders of Court rendered both by the Circuit Court of Dade County, Florida, and by the Supreme Court of the State of Florida, and omitting from said printed record all exhibits attached to the information of quo warranto, including the testimony and proceedings stenographically reported before the City Commission of the City of Miami, and all documents, papers and photographs there offered and admitted in evidence by said City Commission, reserving, however, to the parties the privilege to

use said exhibits in support of or in opposition to the petition for certiorari to be filed by the Petitioner, H. Leslie Quigg.

Respectfully submitted,

E. F. P. BRIGHAM
221 Shoreland Building
Miami, Florida
WORLEY & KEHOE
By: Jack Kehoe
235 Shoreland Building
Miami, Florida
Counsel for Petitioner

JOSEPH A. PADWAY
Of Counsel

STATE OF FLORIDA,
County of Dade:

Personally appeared before me, the undersigned authority, H. LESLIE QUIGG, who being by me first duly sworn, deposes and says:

That he is the Petitioner in the above cause; that he has read the above and foregoing petition to dispense with printing of record, or, in the alternative to print an abbreviated record, and the allegations therein contained are true.

H. LESLIE QUIGG.

Sworn to and subscribed before me this 4th day of January, 1946.

(Notary Seal) Kathleen Penney.

Notary Public, State of Florida at Large.

My Commission Expires: September 25th, 1949.

EXHIBIT "A"

In the Supreme Court of Florida

JUNE TERM, A. D. 1945

MONDAY, NOVEMBER 19, 1945

CHARLES O. NELSON, *Appellant,*

vs.

STATE OF FLORIDA, ex rel.,

H. LESLIE QUIGG, *Appellee.*

Upon consideration of the petition of counsel for appellee for an order directing the Clerk of this Court to transmit to the Clerk of the Supreme Court of the United States the original exhibits filed in this cause for the purpose of making a printed record for the United States Supreme Court, in appellee's petition in that court for writ of certiorari, it is ordered that the Clerk of this court be and he is authorized and directed to transmit said exhibits to the Clerk of the United States Supreme Court on request of counsel for appellee on condition that said original exhibits, after disposition of the petition for writ of certiorari, be returned by the Clerk of the United States Supreme Court to the Clerk of this Court.

A True Copy

TEST:

(COURT SEAL)

GUYTE P. McCORD,
Clerk Supreme Court.

EXHIBIT "B"

In the Supreme Court of Florida

JANUARY TERM, A. D. 1945

WEDNESDAY, JANUARY 31, 1945

CHARLES O. NELSON, *Appellant,*

vs.

STATE OF FLORIDA, ex rel.,

H. LESLIE QUIGG, *Appellee.*

This cause coming on to be heard upon the verified petition of the appellant, Charles O. Nelson, for an order relating to sending up the original exhibits to the Supreme Court, and requiring the furnishing of only a part of the transcript of record to the appellee, and it appearing that the appellee has been duly notified of this hearing, upon consideration of this petition, it is considered, ordered, adjudged and decreed as follows:

1. That it has been made to appear that service of a complete copy of the transcript of record on the appellee would work an undue hardship and cause unreasonable expense on the appellant, Charles O. Nelson, and accordingly, the appellant may serve a true and correct copy of the transcript of record in this cause, upon the appellee, without copying therein, the transcript of testimony filed in the Trial Court; provided that if appellant's attorneys have an office copy of the transcript of testimony in a better state of preservation than the office copy of appellee's attorneys, that attorneys for the parties exchange copies thereof. The appellee's attorneys shall have the choice of said copies.

2. That it is necessary that the original exhibits filed in evidence in this cause, be inspected by the Supreme Court,

and therefore, all exhibits and records which were offered in evidence by either the appellant or the appellee, shall be transmitted to their original form as they were introduced at the trial in said cause, by the Clerk of the Trial Court to the Supreme Court of Florida, but said exhibits shall be held in the lower court until the briefs have been filed in the Supreme Court by both the appellant and the appellee, for inspection during the preparation of said briefs, and then transmitted to the Supreme Court to be placed with the Transcript of Record and considered as a part thereof.

A True Copy

TEST:

GUYTE P. McCORD,

Clerk Supreme Court.
(COURT SEAL)